

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RAMONA KAYE SIMONS,

Plaintiff,

v.

Civil No. 05-10049-BC

Honorable David M. Lawson

CREDIT-BASED ASSET SERVICING
AND SERCURITIZATION, L. L. C.
C-BASS, LAWRENCE LITTON
President of Litton Loan Servicing, L. P.
Corporation , and RICHARD WELKE
Attorney for C-BASS,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION, OVERRULING
OBJECTIONS, AND DISMISSING COMPLAINT**

The plaintiff, Ramona Kaye Simons, filed this *pro se* complaint on February 10, 2005 alleging that the defendants violated the Privacy Act, 5 U.S.C. § 552a, by refusing to correct an account record to reflect a payment made by the plaintiff. The matter was referred to Magistrate Judge Charles E. Binder on March 9, 2005 for full case management. On April 6, 2005, the defendants filed a motion to dismiss in which they asked that the plaintiff be ordered to pay their costs and be enjoined from filing further claims against them.

The matter is now before the Court on the magistrate judge's report and recommendation that the motion to dismiss be converted to a motion for summary judgment and that the case be dismissed for lack of jurisdiction. The plaintiff filed timely objections to the recommendation, and the matter is before the Court for a *de novo* review. After conducting a *de novo* review of the papers submitted by the parties, the Report and Recommendation of the magistrate judge, and the plaintiff's and defendants' objections thereto, the Court concludes that none of the grounds advanced by the

plaintiff support a finding of jurisdiction. Accordingly, the Court will adopt the recommendation of the magistrate judge and dismiss the complaint with prejudice.

The magistrate judge found that the Court does not have jurisdiction to order the relief requested by the plaintiff because the statute relied upon by the plaintiff, 5 U.S.C. § 552a, applies only to federal agencies. As the defendants are not federal agencies under the definition adopted by the statute, the magistrate judge found that this Court may not grant the plaintiff any relief allowed by the statute.

The plaintiff objects to the recommendation of dismissal because the defendants are “subordinate agencies to the federal agencies on the bases that they do engage in interstate commerce through their multi-state mortgage loan activities.” Pl.’s Objs. 4-5. The plaintiff believes the defendants are “direct line agencies, through their corporate status, to the federal State Department” and “to the federal Department of Commerce, banking/mortgage division” because they engage in “interstate money lending for home and commercial mortgages.” *Id.* at 5.

The magistrate judge correctly found that the defendants are not federal agencies. According to the statute, an agency “includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.” 5 U.S.C. § 552(f). The defendants simply are not covered by this definition. Accordingly, the Court finds that the Magistrate Judge properly recommended that the claims against the defendants be dismissed with prejudice.

The magistrate judge also recommended that the defendants’ request for costs and an injunction be denied because dismissal of the plaintiff’s claim is “itself a sufficient sanction” and

awarding additional sanctions “would effectively convert this case into a sanctions litigation, which . . . would not be the best use of scarce judicial resources.” Mag. Judge’s R&R 8 n.2. The defendants object to this recommendation: “One need only a cursory review of the Petitioner’s Objections to determine the extent that sanctions are warranted.” Defs.’ Objs. 3. The Court agrees with the magistrate judge that sanctions should not be granted.

Accordingly, it is **ORDERED** that the Magistrate Judge’s Report and Recommendation is **ADOPTED** and the plaintiff’s and defendants’ objections are **OVERRULED**.

It is **FURTHER ORDERED** that the defendants’ Motion for Summary Judgment [dkt # 21] is **GRANTED**.

s/David M. Lawson

DAVID M. LAWSON
United States District Judge

Dated: September 21, 2005

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on September 21, 2005.

s/Tracy A. Jacobs

TRACY A. JACOBS